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10 Attorneys for Defendants **LOS ANGELES POLICE DEPARTMENT** and **ALEX**
11 **VARGAS**

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NADINE HAYS,

Plaintiff,

vs.

LOS ANGELES POLICE
DEPARTMENT (LAPD), LOS
ANGELES BOARD OF POLICE
COMMISSIONERS, BANK OF
AMERICA, AND THE
FOLLOWING INDIVIDUALS, ALL
BEING SUED AS INDIVIDUALS
AND IN THEIR PROFESSIONAL
CAPACITY; OFFICER NAVARRO,
#31587, OFFICER ESCHAVARRIA,
#34633, OFFICER PRUDE, #34814,
OFFICER GUMP, #33303, OFFICER
FOWLER, OFFICER CORONADO,
OFFICER BIRCH,
OFFICER VERGARA, CAPTAIN
RODRIQUEZ, OFFICER
MONTGOMERY, OFFICER
GILLEM, OFFICER DOMINQUEZ,
#39968, CAPTAIN HORACE
FRANK, DETECTIVE BRAUSAM,
DETECTIVE MACIAS,
DETECTIVE DELGADO, CAPTAIN
DON SCHWARTZER, DETECTIVE
DE LA COVA, ALEX VARGAS,
ROBERT TAYLOR, #3866 and
DOES 1-30,

Defendants.

CASE NO.: **CV12-10219 DMG (PJW)**

Judge: *Hon. Dolly M. Gee, Ctrm. 7*
Magistrate: *Hon. Patrick J. Walsh, Ctrm. 23*

ANSWER OF DEFENDANTS LOS
ANGELES POLICE DEPARTMENT
and ALEX VARGAS TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES;

DEMAND FOR JURY TRIAL

1 **COME NOW, Defendants, LOS ANGELES POLICE DEPARTMENT and**
2 **ALEX VARGAS** herein to answer the Plaintiff's Complaint for Damages for themselves
3 and for no other party, hereby admit, deny and allege as follows:

4 1. Answering paragraphs 1, 3, 7, 10, 20, 25-30, 32 and 33, 37 and 38, 54 and
5 55, 63 and 64, 75 and 76 and 149 through 153, defendants lack sufficient information
6 and belief upon which to answer the allegations contained therein, and on that basis deny
7 the allegations.

8 2. Answering paragraphs 2, 6, 11 through 19, 21 through 24, 31, 34 through 36,
9 39 through 53, 56 through 58, 60 through 62, 66 through 73, 77 through 83, 85 and 86,
10 88 through 97, 99-101, 103 through 106, 108 and 109, 112 through 115, 117 through
11 119, 121, 123 through 125, 127 and 128, 130 through 133, 135 through 137, 139 and
12 140, and 142 through 148, defendants deny the allegations contained therein.

13 3. Answering paragraph 59, defendants lack sufficient information and belief
14 upon which to answer the allegations contained in paragraphs 1 through 11 of the
15 Statement of Facts and Claims for Relief, and thus do not that basis deny for lack of
16 information and belief, additionally, these Defendants incorporate by reference their
17 answers to paragraphs 1 through 58 of Plaintiff's Complaint and by this reference
18 incorporate the same herein.

19 4. Answering paragraph 65, defendants lack sufficient information and belief
20 upon which to answer the allegations contained in paragraphs 1 through 11 of the
21 Statement of Facts and Claims for Relief, and thus do not that basis deny for lack of
22 information and belief, additionally, these Defendants incorporate by reference their
23 answers to paragraphs 1 through 64 of Plaintiff's Complaint and by this reference
24 incorporate the same herein.

25 5. Answering paragraph 74, defendants lack sufficient information and belief
26 upon which to answer the allegations contained in paragraphs 1 through 11 of the
27 Statement of Facts and Claims for Relief, and thus do not that basis deny for lack of
28 information and belief, additionally, these Defendants incorporate by reference their

1 answers to paragraphs 1 through 73 of Plaintiff's Complaint and by this reference
2 incorporate the same herein.

3 6. Answering paragraph 84, defendants lack sufficient information and belief
4 upon which to answer the allegations contained in paragraphs 1 through 11 of the
5 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
6 information and belief, additionally, these Defendants incorporate by reference their
7 answers to paragraphs 1 through 83 of Plaintiff's Complaint and by this reference
8 incorporate the same herein.

9 7. Answering paragraph 87, defendants lack sufficient information and belief
10 upon which to answer the allegations contained in paragraphs 1 through 11 of the
11 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
12 information and belief, additionally, these Defendants incorporate by reference their
13 answers to paragraphs 1 through 86 of Plaintiff's Complaint and by this reference
14 incorporate the same herein.

15 8. Answering paragraph 98, defendants lack sufficient information and belief
16 upon which to answer the allegations contained in paragraphs 1 through 11 of the
17 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
18 information and belief, additionally, these Defendants incorporate by reference their
19 answers to paragraphs 1 through 97 of Plaintiff's Complaint and by this reference
20 incorporate the same herein.

21 9. Answering paragraph 102, defendants lack sufficient information and belief
22 upon which to answer the allegations contained in paragraphs 1 through 11 of the
23 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
24 information and belief, additionally, these Defendants incorporate by reference their
25 answers to paragraphs 1 through 101 of Plaintiff's Complaint and by this reference
26 incorporate the same herein.

27 10. Answering paragraph 107, defendants lack sufficient information and belief
28 upon which to answer the allegations contained in paragraphs 1 through 11 of the

1 Statement of Facts and Claims for Relief, and thus do not basis deny for lack of
2 information and belief, additionally, these Defendants incorporate by reference their
3 answers to paragraphs 1 through 106 of Plaintiff's Complaint and by this reference
4 incorporate the same herein.

5 11. Answering paragraph 110, defendants lack sufficient information and belief
6 upon which to answer the allegations contained in paragraphs 1 through 11 of the
7 Statement of Facts and Claims for Relief, and thus do not basis deny for lack of
8 information and belief, additionally, these Defendants incorporate by reference their
9 answers to paragraphs 1 through 109 of Plaintiff's Complaint and by this reference
10 incorporate the same herein.

11 12. Answering paragraph 112, defendants lack sufficient information and belief
12 upon which to answer the allegations contained in paragraphs 1 through 11 of the
13 Statement of Facts and Claims for Relief, and thus do not basis deny for lack of
14 information and belief, additionally, these Defendants incorporate by reference their
15 answers to paragraphs 1 through 111 of Plaintiff's Complaint and by this reference
16 incorporate the same herein.

17 13. Answering paragraph 116, defendants lack sufficient information and belief
18 upon which to answer the allegations contained in paragraphs 1 through 11 of the
19 Statement of Facts and Claims for Relief, and thus do not basis deny for lack of
20 information and belief, additionally, these Defendants incorporate by reference their
21 answers to paragraphs 1 through 115 of Plaintiff's Complaint and by this reference
22 incorporate the same herein.

23 14. Answering paragraph 120, defendants lack sufficient information and belief
24 upon which to answer the allegations contained in paragraphs 1 through 11 of the
25 Statement of Facts and Claims for Relief, and thus do not basis deny for lack of
26 information and belief, additionally, these Defendants incorporate by reference their
27 answers to paragraphs 1 through 119 of Plaintiff's Complaint and by this reference
28 incorporate the same herein.

1 15. Answering paragraph 122, defendants lack sufficient information and belief
2 upon which to answer the allegations contained in paragraphs 1 through 11 of the
3 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
4 information and belief, additionally, these Defendants incorporate by reference their
5 answers to paragraphs 1 through 121 of Plaintiff's Complaint and by this reference
6 incorporate the same herein.

7 16. Answering paragraph 126, defendants lack sufficient information and belief
8 upon which to answer the allegations contained in paragraphs 1 through 11 of the
9 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
10 information and belief, additionally, these Defendants incorporate by reference their
11 answers to paragraphs 1 through 125 of Plaintiff's Complaint and by this reference
12 incorporate the same herein.

13 17. Answering paragraph 129, defendants lack sufficient information and belief
14 upon which to answer the allegations contained in paragraphs 1 through 11 of the
15 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
16 information and belief, additionally, these Defendants incorporate by reference their
17 answers to paragraphs 1 through 128 of Plaintiff's Complaint and by this reference
18 incorporate the same herein.

19 18. Answering paragraph 134, defendants lack sufficient information and belief
20 upon which to answer the allegations contained in paragraphs 1 through 11 of the
21 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
22 information and belief, additionally, these Defendants incorporate by reference their
23 answers to paragraphs 1 through 133 of Plaintiff's Complaint and by this reference
24 incorporate the same herein.

25 19. Answering paragraph 138, defendants lack sufficient information and belief
26 upon which to answer the allegations contained in paragraphs 1 through 11 of the
27 Statement of Facts and Claims for Relief, and thus do that basis deny for lack of
28 information and belief, additionally, these Defendants incorporate by reference their

1 answers to paragraphs 1 through 137 of Plaintiff's Complaint and by this reference
2 incorporate the same herein.

3 20. Answering paragraph 141, defendants lack sufficient information and belief
4 upon which to answer the allegations contained in paragraphs 1 through 11 of the
5 Statement of Facts and Claims for Relief, and thus do not that basis deny for lack of
6 information and belief, additionally, these Defendants incorporate by reference their
7 answers to paragraphs 1 through 140 of Plaintiff's Complaint and by this reference
8 incorporate the same herein.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, this Defendant alleges each of the following:

FIRST AFFIRMATIVE DEFENSE

14 The damages alleged were directly and proximately caused and contributed
15 to by the negligence of Plaintiffs, and the extent of damages sustained, if any, should be
16 reduced in proportion to the amount of said negligence.

SECOND AFFIRMATIVE DEFENSE

18 The damages alleged were directly and proximately caused and contributed
19 to by the negligence of other persons, and the extent of damages sustained, if any, should
20 be reduced in proportion to the amount of said negligence.

THIRD AFFIRMATIVE DEFENSE

22 Plaintiffs had actual knowledge of the condition and particular danger
23 alleged, knew and understood the degree of the risk involved, and voluntarily assumed
24 such risk.

FOURTH AFFIRMATIVE DEFENSE

26 The state claims are barred for Plaintiffs' failure to comply with the provisions
27 of the California Tort Claims Act, Government Code § 910 et seq.

FIFTH AFFIRMATIVE DEFENSE

The Defendant is immune from liability pursuant to the provision of each of the following California statutes, each of which is set forth as a separate and distinct affirmative defense:

Government Code §§ 815.2; 818; 820.2; 820.4; 820.8; 821.6, 845 and 945.6

Civil Code §§ 43.55 and 47

Penal Code §§ 836; 836.5 and 847

Labor Code § 3600

SIXTH AFFIRMATIVE DEFENSE

The force used against the Plaintiffs, if any, was caused and necessitated by the actions of the Plaintiffs, and was reasonable and necessary for self defense.

SEVENTH AFFIRMATIVE DEFENSE

The force used against Plaintiffs, if any, was caused and necessitated by the actions of Plaintiffs, and was reasonable and necessary for the defense of others.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action due to applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

The action is barred by the doctrine of res judicata.

TENTH AFFIRMATIVE DEFENSE

This action is barred by the doctrine of collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

As to the federal claims and theories of recovery, the answering Defendants is protected from liability under the doctrine of qualified immunity, because Defendant's conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

TWELFTH AFFIRMATIVE DEFENSE

The answering Defendant is immune from liability for all damages sustained after the prosecutor initiated criminal charges, pursuant to Smiddy v. Varney, 803 F.2d 1469 (9th Cir. 1986), and Jackson v. City of San Diego, 121 Cal.App.3d 579 (1981).

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant City of Los Angeles and all Defendants sued in their official capacities are immune from the imposition of punitive damages.

DEMAND FOR JURY TRIAL

Defendant hereby demands and requests a trial by jury in this matter.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by this action;
2. That the action be dismissed;
3. That Defendant be awarded costs of suit;
4. That Defendant be awarded other and further relief as the Court may

deem just and proper, including an award of attorney's fees pursuant to 42 U.S.C.

§ 1988.

DATED: March 1, 2013

CARMEN A. TRUTANICH, City Attorney
GARY G. GEUSS, Chief Assistant City Attorney
CORY M. BRENT, Supv. Assistant City Attorney

By: RICHARD M. ARIAS /s/
Deputy City Attorney

Attorneys for Defendants LOS ANGELES POLICE
DEPARTMENT and ALEX VARGAS

PROOF OF SERVICE

I, LINDA COVARRUBIAZ, declare as follows:

At the time of service I was over 18 years of age and not a party to this action. My business address is 200 N. Main Street, 600 City Hall East, Los Angeles, CA 90012, which is the County, City and State where this mailing occurred.

On March 1, 2013, I served the document(s) described as:

ANSWER OF DEFENDANTS LOS ANGELES POLICE DEPARTMENT and ALEX VARGAS TO PLAINTIFF'S AMENDED COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

on all interested parties in this action:

PLAINTIFF, In Pro Per

NADINE HAYS
370 Highland Hills Drive
Camarillo, CA 93010
NadineHays@aol.com
Tel: (805) 484-4452
Fax: (818) 474-7676

I served a true copy of the document(s) above by:

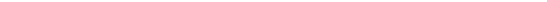
Personally delivering it to the person(s) indicated below in the manner provided in FRCivP 5(b).

Depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the address(es) above.

Executed on **March 1, 2013**, at Los Angeles, California.

[] I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.

[X] I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

[X] I hereby certify under the penalty of perjury that the foregoing is true and correct. 

Linda Covarrubias
LINDA COVARRUBIAS